SIDNEY H. SCHRETER
WILLIAM F. WOPP, JR.

IBLA 77-269
77-270 Decided September 12, 1977

Appeals from separate decisions of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offers W-57715 and W-57703, respectively.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Sole Party in Interest--Oil and Gas Leases: First Qualified Applicant

   When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Sole Party in Interest

   When a leasing service holds an interest in a lease at the time it files an offer

> on behalf of an offeror, the offeror is not the sole party in interest and he is required by regulation, 43 CFR 3102.7, to provide the names of other interested parties, the nature and extent of their interest and the nature of the agreement between them not later than 15 days after the filing of the offer. Failure to file the required statements results in rejection of the offer.

APPEARANCES: Harry W. Theuerkauf, Esq., Milwaukee, Wisconsin, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Sidney H. Schreter and William F. Wopp, Jr., have appealed from separate decisions of the Wyoming State Office, Bureau of Land Management (BLM), which rejected simultaneously filed oil and gas lease offers W-57715 and W-57703, respectively.

The lease offers were rejected by BLM following the receipt by BLM of protests against the issuance of an oil and gas lease to each of the appellants following their filing cards having been first drawn in the November 1976 simultaneous drawings held in the Wyoming State Office, BLM. 1/ The protests were filed by one Eugene R. Fischer, Milwaukee, Wisconsin. The protests charged that each appellant was subject to a binding agreement with the Resource Service Company (RSC) which established a nonrevokable and exclusive agency on the part of the company whereby the company would have an interest in the lease which ordinarily would be issued. BLM found that the service agreement used by RSC was an "agreement, scheme, or plan" within the meaning of 43 CFR 3112.5-2, which is the regulation governing multiple filings. BLM concluded in each case that the offer should be rejected because the language of the service agreement violated the regulation against multiple filings. BLM also indicated that since RSC had an interest in the lease offers at the time they were filed, the offeror was required by regulation, 43 CFR 3102.7, 2/ to file an additional statement disclosing such interest.

1/ Mr. Schreter's card was first drawn for parcel WY 77 and Mr. Wopp's for parcel WY 65.

2/ 43 CFR 3102.7 reads as follows:

"§ 3102.7 Showing as to sole party in interest.

A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other

The pertinent language in the service agreement used by RSC provides:

> If I am successful in a drawing, I hereby authorize you to act as my sole and exclusive agent to negotiate for me and on my behalf with any party, firm or corporation for sub-lease, assignment or sale of any rights I obtain by reason of being successful in a drawing for the best price obtainable by you. Any final negotiated price is subject to my approval. If you have successfully negotiated a sale, assignment or lease of my rights by reason of a successful drawing or if I do so during the term of this agency, I hereby agree to pay you for your services in accordance with the schedule detailed below. This agency to negotiate shall be valid for a period of five (5) years. [Emphasis in original.]

The agreement further provided for a schedule of compensation to RSC as it related to a sale or assignment of royalty payments.

Appellants initially argue on appeal that the record does not support BLM's conclusion that appellants violated the regulation, 43 CFR 3112.5-2, prohibiting multiple filings. Appellants assert that there is no evidence that RSC filed for more than one offeror on the same parcel. Appellants argue in the alternative that assuming there is sufficient evidence that RSC filed for more than one offeror on the same parcel, they contend that RSC had no "interest" in the lease at the time of the drawing and that the service agreement did not put the offeror in violation of 43 CFR 3112.5-2.

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fn. 2 (continued)
parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is canceled."

Appellants argue that the agency created by the service agreement is not unlike the real estate broker's agency to sell real estate, and they assert that the courts have consistently held that the principal/agent relationship of the seller of real estate and the broker creates no interest in the broker in the subject property. Such an argument ignores the fact that an interest in a federal oil and gas lease is governed by regulation. "Interest" in a lease is defined in 43 CFR 3100.0-5(b), which provides:

> Sole party in interest. A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

[1] The issue for resolution is whether the executed service agreement created an "interest" in RSC within the meaning of 43 CFR 3100.0-5(a). Appellants' analogy to the real estate broker's agency and citation of cases is inapposite to the present case. Whether RSC had an interest must be determined from an examination of the language of the service agreement and the regulation.

Under the terms of the service agreement RSC was authorized to complete the appropriate government forms and to select parcels of land on behalf of the offeror. The offeror agreed to repay RSC

for any advance rental fees paid on behalf of the offeror. RSC was also authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror. Any negotiated price would be subject to the approval of the offeror. Also, even if the offeror negotiated a sale, assignment or sublease, the offeror was required to pay RSC according to a schedule set forth in the agreement. RSC's agency to negotiate was to be valid for 5 years.

The leading departmental case examining the question of sole party in interest is John V. Steffens, 74 I.D. 46 (1967). In Steffens, a leasing service selected lands, filed offers, and advanced funds on behalf of its clients for leases which the leasing service was willing to purchase from any successful client. It was held that the leasing service did not hold an "interest" in the offers which it filed on behalf of its clients. The service had no enforceable right to purchase the leases. It had merely a hope or expectation of sharing in the profits, and a hope or expectation is not the same as the right to share in such a lease. Id. at 53. See also, D. E. Pack, 30 IBLA 166, 175, __ I.D. __ (1977).

Steffens and Pack are clearly distinguishable from the present situation. Herein, the service agreement provides RSC with more than a mere hope or expectation of sharing in the profits. RSC has an enforceable right by the terms of the agency provision of the agreement to share in the profits of any sublease, assignment, or sale of a lease, whether such sublease, assignment, or sale is negotiated by RSC or by the offeror. In addition, such a right is enforceable for a period of 5 years.

The service agreement created an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b). The definition of an interest in a lease is broad in scope. It includes, "but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such 'interests'." RSC has a prospective claim to a benefit from a lease. The service agreement serves to provide RSC with a defined share of any profits which may be derived from the lease pursuant to the agreement which was in existence at the time the offer was filed.

[2] At the time appellants' offers were filed, each had executed a copy of the service agreement provided by RSC. As set forth above, such agreement created an "interest" in any lease which would issue to the offerors. Since RSC held interests at the time appellants' offers were filed, appellants were not the sole parties in interest of their respective offers. As such, they were required by regulation, 43 CFR 3102.7, set forth supra, to provide the names

of other interested parties, the nature and extent of their interest and the nature of the agreement between them. Pursuant to the regulation, such a filing must be made not later than 15 days after the filing of the lease offer. Appellants' failure to file the required statement is a sufficient ground for rejection of their offers.

Having established that RSC held an interest in the leases, it is clear that if any other offeror availed himself of RSC's services, thereby executing a service agreement, and if such an offeror's entry card was filed by RSC in a drawing with another offeror filing through RSC, the regulation prohibiting multiple filings, 43 CFR 3112.5-2, would be violated. Such a violation would necessitate a rejection of all offers filed by RSC on behalf of offerors who had executed the service agreement containing the fatal language. However, in the present cases despite the fact that BLM primarily based its rejection of the offers on a violation of 43 CFR 3112.5-2, the records do not support a finding of multiple filings. There is no evidence in the records of these cases that more than one offer was filed through RSC in either of the drawings, therefore, it is impossible to conclude that 43 CFR 3112.5-2 was violated in either of these cases. 3/

The lack of evidence concerning multiple filings, however, does not affect the result of the BLM decisions. The lease offers were properly rejected because of RSC's interest in such offers. As stated by BLM in each of the decisions: "An additional statement was required for your lease offer in accordance with 43 CFR 3102.7 (showing as to sole party in interest). Your failure to provide the additional statement is itself grounds for rejection of your lease offer."

3/ This does not constitute a finding that BLM was wrong in this regard, but only a finding that on the basis of the record before us we cannot hold that the Bureau was correct.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed as modified.

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Frederick Fishman
Administrative Judge

We concur:

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Edward W. Stuebing
Administrative Judge

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Joan B. Thompson
Administrative Judge